

FILED

FEB 09 2009

BEFORE THE DISCIPLINARY COMMISSION OF THE
OF THE SUPREME COURT OF ARIZONA
BY M. Smith

IN THE MATTER OF A MEMBER) Nos. 07-1611, 07-1657, 07-1683,
OF THE STATE BAR OF ARIZONA,) 07-1703, 07-2082, 08-0363
)
CHESTER R. LOCKWOOD,)
Bar No. 003348)
) **DISCIPLINARY COMMISSION**
) **REPORT**
RESPONDENT.)
_____)

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on January 10, 2009, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer's Report filed November 26, 2008, recommending acceptance of the Tender of Admissions and Agreement for Discipline by Consent ("Tender") and Joint Memorandum ("Joint Memorandum") providing for a 90 day suspension, two years of probation with the State Bar's Law Office Management Assistance Program ("LOMAP"), costs including costs within 30-days of the date of the Supreme Court's final Judgment and Order.

Decision

Having found no facts clearly erroneous, the nine members of the Disciplinary Commission unanimously recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions of law, and recommendation for a 90 day suspension, two years of probation (LOMAP), and costs of these disciplinary proceedings including any costs incurred by the Disciplinary Clerk's office within 30-days.¹

¹ A copy of the Hearing Officer's Report is attached as Exhibit A.

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2. If Respondent leaves his employment at the Public Defender's Office and/or re-enters private practice, he shall, within 10 days, contact the State Bar's Law Office Management Assistance Program, enter into a LOMAP contract and successfully complete his contract. Respondent shall comply with and cooperate with all recommendations of LOMAP.

3. Respondent shall refrain from engaging in any conduct that would violate the Rules of Professional Conduct or other rules of the Supreme Court of Arizona.

4. In the event that Respondent fails to comply with any of the foregoing conditions, and the State Bar receives information, bar counsel shall file with the imposing entity a Notice of Non-Compliance, pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct. The Hearing Officer shall conduct a hearing within 30-days after receipt of said notice, to determine whether the terms of probation have been violated and if an additional sanction should be imposed. In the event there is an allegation that any of these terms have been violated, the burden of proof shall be on the State Bar of Arizona to prove non-compliance by clear and convincing evidence.

RESPECTFULLY SUBMITTED this 9th day of February, 2009.

Daisy Flores
Daisy Flores, Chair
Disciplinary Commission

² The Hearing Officer's Report did not contain terms of probation but accepted those terms set forth in the Joint Memorandum. *See* Report, p. 3.

Original filed with the Disciplinary Clerk
this 9th day of February, 2009.

Copy of the foregoing mailed
this 9th day of February, 2009, to:

Robert J. Stephan, Jr.
Hearing Officer 9R
P.O Box 500
Tempe, AZ 85280

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by: G. L. Lopez

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EXHIBIT A

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**BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA**

FILED

NOV 26 2008

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY: *[Signature]*

IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)

CHESTER R. LOCKWOOD,)
Bar No. 003348)

RESPONDENT.)

No. 07-1611, 07-1657, 07-1683
07-1703, 07-2082, 08-0363

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

The Complaint was filed on March 25, 2008. Respondent filed an Answer on May 2, 2008. Amendments to the pleadings followed. The parties filed a Tender of Admissions and Agreement for Discipline by Consent and Joint Memorandum on November 4, 2008. Respondent filed a Supplemental Memorandum on November 6, 2008. A hearing was held on November 6, 2008.

FINDINGS OF FACT

1. At all times relevant, Respondent was an attorney licensed to practice law, having been admitted to practice in Arizona on April 28, 1973.

2. Respondent agrees to accept a ninety day suspension and be placed on probation for a period of two years for conduct involving delays in the refund of unearned fees, poor communication and lack of diligence.

3. Restitution is not an issue in this case because Respondent took remedial measures to refund unearned fees.

4. Respondent's conduct violated Rule 42, *Rules of the Supreme Court*, specifically ER 1.3, 1.4, 1.5(b), 1.7(a)(2), 3.2(b), 3.4(c), 1.15(d), 1.16(d), 5.3, 5.5, 8.4(d) and Rule 53(f), *Rules of the Supreme Court*, which Respondent conditionally admits.

ABA STANDARDS

The ABA *Standards* list the following factors to consider in imposing the appropriate sanction: (1) the duty violated, (2) the lawyer's mental state, (3) the actual or potential injury caused by the lawyer's misconduct, and (4) the existence of aggravating or mitigating circumstances. ABA *Standard* 3.0; *In re Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004).

RECOMMENDATION

The purpose of lawyer discipline is not to punish the lawyer, but to protect the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the public, the profession and the administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994).

Upon consideration of the Joint Memorandum, the Respondent's Supplemental Memorandum and the testimony and arguments at the hearing on the matter, acceptance of the Tender of Admissions and Agreement for Discipline by Consent is recommended. It is recommended Respondent be placed on suspension for 90 days and probation for 2 years. The terms of the probation should be as set forth in the Joint Memorandum.

DATED this 25th day of November, 2008.

Robert J. Stephan, Jr./mm
Robert J. Stephan, Jr.
Hearing Officer 9R

Original filed with the Disciplinary Clerk
this 26th day of November, 2008.

Copy of the foregoing mailed
this 28th day of November, 2008, to:

David P. Stoller
Respondent's Counsel
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By: Clarence Jensen